

REMARKS

By this amendment, claims 1-34 are pending in the present application, of which claims 5-16, 20-25 and 32-34 are withdrawn from consideration, claims 1-4, 17, 18 and 26-31 are currently amended, and claim 19 has been canceled without prejudice or disclaimer. No new matter is introduced.

The Office Action dated 8/31/2010:

(1) rejected claims 17-19 under 35 U.S.C. § 101 as being directed to non-statutory subject matter;

(2) rejected claim 31 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention;

(3) rejected claims 1-4, 17-19, 26 and 28-30 under 35 U.S.C. § 102(b) as being anticipated by *Microsoft Disk Operating System (MS-DOS)*;

(4) rejected claim 27 under 35 U.S.C. § 103(a) as being unpatentable over *Microsoft Disk Operating System (MS-DOS)* in view of *Martin* (US 6,337,681); and

(5) rejected claim 31 under 35 U.S.C. § 103(a) as being unpatentable over *Microsoft Disk Operating System (MS-DOS)* in view of *Hawkins et al.* (US 6,009,458).

A. Abstract

In response to the Examiner's "reminder" of the proper language and format for an abstract of the disclosure, Applicants have amended the Abstract in the present application accordingly.

B. 35 U.S.C. § 101 Rejection of Claims 17-19

In order to advance prosecution in this matter, and in accordance with the Examiner's suggestion, Applicants have amended each of independent claims 17 and 18 to recite "computer program code stored on a non-transitory computer-readable storage medium," which excludes transitory signals. Further, Applicants have canceled claim 19. Applicants, therefore, respectfully submit that claims 17 and 18 are drawn to statutory subject matter, and request withdrawal of the rejection of claims 17 and 18 under 35 U.S.C. § 101.

C. 35 U.S.C. § 112, Second Paragraph, Rejection of Claim 31

Claim 31 stands rejected under 35 U.S.C. § 112, second paragraph, based on insufficient antecedent basis for two claimed elements. Accordingly, Applicants have amended claim 31 to correct the antecedent basis issues raised in the Office Action.

D. 35 U.S.C. § 102(b) Rejection of Claims 1-4, 17-19, 26 and 28-30 Over *MS-DOS*

Applicants respectfully traverse the 35 U.S.C. § 102(b) rejection of claims 1-4, 17-19, 26 and 28-30 over *MS-DOS*, because all features of the claims are not disclosed by the applied art.

Claims 1-4, 17-19, 26 and 28-30 stand rejected as allegedly anticipated by *MS-DOS*. To anticipate a claim, the reference must teach every element of the claim. M.P.E.P. § 2131. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). When imposing a rejection under 35 U.S.C. § 102, the Examiner is required to specifically identify

wherein an applied reference is asserted to identically disclose each and every feature of a claimed invention, particularly when such is not apparent as in the present case. *In re Rijckaert*, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984). Applicants submit that the § 102(b) rejection fails to satisfy this burden, because *MS-DOS* fails to provide, disclose or suggest all features of the amended claims, and thus the anticipation rejection cannot be sustained.

To reduce issues for potential appeal, Applicants have provided clarifying amendments to independent claim 1. Specifically, independent claim 1 recites a method comprising “querying an accessible memory for determining electronic games available for execution on an electronic gaming device, and generating a game directory having entries for the determined electronic games.” Further, each of independent claims 17 and 18 incorporate the elements of independent claim 1. No such method elements are provided, disclosed or suggested by *MS-DOS*.

The Office Action cites to two web-page documents for support of the rejection under § 102(b), (1) <http://www.computerhope.com/dirhlp.htm> (an MS-DOS “DIR” command help page, hereinafter “the *Computerhope Reference*”), and (2) <http://en.wikipedia.org/wiki/Ms-dos> (the Wikipedia page for MS-DOS, hereinafter “the *Wikipedia Reference*”). According to the Wikipedia Reference, *MS-DOS* is an operating system for x86-based personal computers from the 1980’s to the mid-90’s. The Office Action specifically cites to the “DIR” command of *MS-DOS* as anticipating claims 1, 17 and 18.

The DIR command of *MS-DOS* simply provides a listing of all files and subdirectories that are available in a specified directory, and not a gaming directory of electronic games that are

available for execution on an electronic gaming device, as presently claimed. Execution of the DIR command results in the display of all available files and subdirectories in the current or in a specified directory of the computer system on which the MS-DOS operating system is running. *See, e.g., Computerhope Reference.* Specifying a particular drive and/or directory path within the DIR command will result in the display of a listing of all files and subdirectories available on the specified drive and/or in the specified directory path. *Id.* Further, specifying a particular filename (which can include wildcards for one or more characters in the filename) in the MS-DOS command will result in the display of all files and subdirectories that match the specified filename. *Id.* Additionally, the DIR command provides for various other switches for customizing the query of files and subdirectories available in a computer system memory directory.

None of the available permutations of the DIR command, however, provide for, or disclose or suggest, a determination of specific files (e.g., game applications) that are available for execution on a particular device (e.g., gaming device). Indeed, the DIR command cannot discern between file types or other attributes (e.g., license attributes) that would render a file available for execution by a particular device. At best, if commanded to provide a listing of all files with a particular file extension (e.g., the command “DIR *.exe”), the DIR command will result in a display of all files with a file name having the extension “.exe,” irrespective of whether or not such files were in fact executable files. The mere fact that a filename has the extension “.exe” does not ensure that the file is indeed an executable file – the DIR command is simply incapable of discerning the actual file type. The DIR command, therefore, cannot generate a directory of files or applications based on a determination that the particular applications are available for execution on a specific device. Accordingly, *MS-DOS* fails to

provide, disclose or suggest the presently claimed elements of querying an accessible memory for determining electronic games available for execution on an electronic gaming device, and generating a game directory having entries for the determined electronic games, as presently claimed.

For at least the foregoing reasons, Applicants submit that *MS-DOS* fails to anticipate any of the independent claims 1, 17 and 18, and accordingly fails to anticipate any of the claims 2-4, 26 and 28-30 depending therefrom, and respectfully request withdrawal of the rejection under 35 U.S.C. § 102.

E. 35 U.S.C. § 103(a) Rejection of Claim 27 Over *MS-DOS* In View Of *Martin*

Applicants respectfully traverse the 35 U.S.C. § 103(a) rejection of claim 27 over *MS-DOS* in view of *Martin*, because all features of the claims are not disclosed by the applied art, either individually or in combination.

Claim 27 ultimately depends from independent claim 1. The Office Action applies *MS-DOS* to the rejected claim 27 on the same bases as with the § 102(b) rejection of claims 1-4, 17-19, 26 and 28-30 (addressed in Section D, above). The Office Action cites to *Martin* for the alleged disclosure of the element “wherein said game directory entries and said selection data are displayed as a whiteboard.” *Martin*, however, as with *MS-DOS*, also lacks any disclosure or suggestion of “querying an accessible memory for determining electronic games available for execution on an electronic gaming device, and generating a game directory having entries for the determined electronic games,” as presently claimed.

Accordingly, for at least the reasons set forth above with respect to independent claims 1, 17 and 18, neither *MS-DOS* or *Martin* alone, nor the combination of *MS-DOS* in view of *Martin*, render claim 27 obvious under 35 U.S.C. § 103.

F. 35 U.S.C. § 103(a) Rejection of Claim 31 Over *MS-DOS* In View of *Hawkins*

Applicants respectfully traverse the 35 U.S.C. § 103(a) rejection of claim 31 over *MS-DOS* in view of *Hawkins*, because all features of the claims are not disclosed by the applied art, either individually or in combination.

Claim 31 depends from independent claim 1. The Office Action applies *MS-DOS* to the rejected claim 31 on the same bases as with the § 102(b) rejection of claims 1-4, 17-19, 26 and 28-30 (addressed in Section D, above). The Office Action cites to *Hawkins* for the alleged disclosure of the element of “sending a request to start a game to any of a plurality of other connected game devices according to one or more selected entries from the game directory.” *Hawkins*, however, as with *MS-DOS*, also lacks any disclosure or suggestion of “querying an accessible memory for determining electronic games available for execution on an electronic gaming device, and generating a game directory having entries for the determined electronic games,” as presently claimed.

Accordingly, for at least the reasons set forth above with respect to independent claims 1, 17 and 18, neither *MS-DOS* or *Martin* alone, nor the combination of *MS-DOS* in view of *Hawkins*, render claim 31 obvious under 35 U.S.C. § 103.

G. Conclusion

Therefore, the present application, as amended, overcomes the objections and rejections of record and is in condition for allowance. Favorable consideration is respectfully requested. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at (703) 519-9952 so that such issues may be resolved as expeditiously as possible.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 504213 and please credit any excess fees to such deposit account.

Respectfully Submitted,

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Date

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